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| 10/667,941      | 09/22/2003  | Andrew Walker        | P-US-CS 1144        | 1634             |

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| EXAMINER |
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KYLE, MICHAEL J

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| ART UNIT | PAPER NUMBER |
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3677

DATE MAILED: 07/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/667,941

Applicant(s)

WALKER ET AL.

Examiner

Michael J. Kyle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 and 9-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-5 is/are allowed.
- 6) ☒ Claim(s) 6,7 and 9-15 is/are rejected.
- 7) ☒ Claim(s) 1 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 1 is objected to because it is unclear if the gripping portion is being claimed in combination with the power tool. The preamble to the claim limits the scope to "A gripping portion" and recites an intended use "for" a power tool, however, the body of the claim goes onto recite a housing and motor within the housing. These appear to be features of a power tool, not a gripping portion. If the combination is to be claimed, it should be clearly set forth in the claim.
2. Claim 1 is objected because of the limitation "said clamping member becoming the housing adjacent at least one flexible member". It is unclear how the clamping member "becomes" the housing. It appears as the clamping member may overlay a portion of the housing, or is secured substantially flush with the housing.
3. Claim 15 is objected to because it is missing a period (.) at the end.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 6, 7, and 9-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wadge (U.S. Patent No. 6,206,107) in view of DeLuca (U.S. Patent No. 6,591,456).

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6. With respect to claims 6 and 7, Wadge discloses a power tool having a housing (4) with a handle (10) and a motor to actuate an output member of the tool. The handle includes a gripping portion (area to be gripped by user). Wadge fails to disclose the chamber enclosing a gaseous vibration damping medium, as claimed.

7. DeLuca teaches a tool with a gripping portion where the gripping portion includes a chamber (106) enclosing a gaseous vibration damping medium (column 12, lines 20-21) extending outwardly from the gripping portion so that the gripping portion and the chamber may be simultaneously gripped. DeLuca uses the arrangement to provide a cushioning effect for the user (abstract). The gripping portion surrounds and secures the chamber in the gripping portion. The chamber is positioned to enable parts of the user's hand to contact the gripping portion and the chamber. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Wadge as taught by DeLuca, such that Wadge includes the chamber arrangement of DeLuca, in order to provide a cushioning effect for the user. DeLuca's arrangement further includes a cover piece (230, 250, 256) made of a material that is relatively hard as compared to the gaseous vibration damping medium. Examiner notes that any material will be relatively hard compared to a gas. The cover piece includes an aperture (254) through which the chamber protrudes. Examiner notes that the limitations regarding portions of a user's hand contact different portions of the grip are intended use recitations.

8. With respect to claims 9-11, Wadge discloses a power drill (shown in figure 4) comprising a main body (4), a handle (10) having opposite side surfaces (6, 8) each defining gripping regions. Wadge fails to disclose the two chambers as claimed.

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9. DeLuca teaches two chambers (106) enclosing a gaseous vibration damping medium, and positioned on opposite side surfaces of the handle with one chamber protruding outwardly from the gripping region of each opposite side surface. The gripping region (formed partially by 210, 23, 250) covers a portion of the chambers. The chambers are discrete from each other. DeLuca uses the arrangement to provide a cushioning effect for the user (abstract). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Wadge as taught by DeLuca, such that Wadge includes the chamber arrangement of DeLuca, in order to provide a cushioning effect for the user. DeLuca also teaches four chambers.

10. With respect to claim 11, DeLuca discloses a single cover piece, but neither Wadge nor DeLuca show two cover pieces. However, replacing a single piece with multiple parts that act identical to the single piece is considered obvious and well known in the art. Such a change produces no new or unexpected result. It would have been obvious to one having ordinary skill in the art at the time of the invention to replace the single cover piece of DeLuca with a two cover pieces.

11. With respect to claims 12-14, Wadge discloses a power sander (column 5, line 1) comprising a housing with a main body (4) and upper gripping portion (on 10), a drive motor (22) in the main body, a sanding platen (sander attachment piece, not shown) extending downwardly from the main body and being driven by the drive motor. The handle (10) extends rearwardly from the main body. Wadge fails to disclose the chamber as claimed.

12. DeLuca teaches a tool with a gripping portion where the gripping portion includes a chamber (106) enclosing a gaseous vibration damping medium (column 12, lines 20-21) resting

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on a portion of a housing (radially inner element shown in figure 11). The chamber protrudes from an upper surface of the gripping portion (formed partially by 230, 250, 256) so that the gripping portion retains the chamber on the housing and covers the housing portion adjacent the chamber. DeLuca uses the arrangement to provide a cushioning effect for the user (abstract). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Wadge as taught by DeLuca, such that Wadge includes the chamber arrangement of DeLuca, in order to provide a cushioning effect for the user. DeLuca also teaches four chambers. As a result of the combination, the chamber of DeLuca will protrude from an upper surface of the gripping portion of Wadge. DeLuca further shows two chambers enclosing the gaseous vibration damping medium.

13. With respect to claim 15, Wadge discloses a power saw (column 5, line 1, "jigsaw") comprising a main body (4) with an opening (18) therethrough to define a handle (10) rearwardly of the opening, the housing adapted to receive a saw blade at a forward end. A motor (22) is disposed in the main body. The handle includes a gripping portion. Wadge fails to disclose the chamber as claimed.

14. DeLuca teaches a tool with a gripping portion where the gripping portion includes a chamber (106) enclosing a gaseous vibration damping medium (column 12, lines 20-21) extending outwardly from the gripping portion so that the gripping portion and the chamber may be simultaneously gripped. The chamber is positioned on the gripping portion (formed partially by 230, 250, 256) so that parts of a user's hand may contact the gripping portion and other parts may contact the chamber). This is made possible based on the pressure applied to the chamber

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and the spacing between the chambers. DeLuca uses the arrangement to provide a cushioning effect for the user (abstract). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Wadge as taught by DeLuca, such that Wadge includes the chamber arrangement of DeLuca, in order to provide a cushioning effect for the user.

***Allowable Subject Matter***

15. Claim 1 would be allowable if rewritten or amended to overcome the claim objections set forth in this Office action.

16. Claims 2-5 are allowed because the prior art fails to show the combination of a power tool with a gripping portion including at least one flexible sheet and at least one support having an aperture, where the flexible sheet protrudes through the aperture and forms a chamber bound by the housing of the tool and a single thickness of the flexible sheet and where the single thickness of the sheet directly contacts the housing adjacent the chamber. In DeLuca, the chamber is bound by another flexible sheet, not a housing.

***Response to Arguments***

17. Applicant's arguments filed April 25, 2006, have been fully considered but they are not persuasive with respect to claims 6, 9, 12, 13 and 15 and claims depending therefrom.

18. With respect to claim 6, applicant argues the combination of DeLuca and Wadge fails to show the chamber positioned on the gripping portion such that the one part of a user's hand may contact the gripping portion and another part may contact the chambers. Examiner respectfully disagrees. These limitations are only intended use recitations. The claimed structure does not differentiate the instant invention from the prior art in a manner that precludes the prior art from

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being used in the intended manner. In the prior art, it appears that it is capable for a user's hand to contact both the chamber and the gripping portion depending on the pressure applied and the spacing between the chambers.

19. With respect to claim 9, applicant argues that the claim is patterned after claim 1 and applies the remarks from claim 1 to claim 9. Examiner notes that it is unclear how claim 9 is patterned after claim 1. Many of the remarks in regard claim 1 are directed toward elements not found in claim 9. The rejection of claim 9 recited above is maintained.

20. With respect to claim 12, applicant argues that DeLuca fails to show the chamber protruding from an upper surface of the gripping portion such that the gripping portion retains the chamber on the housing. Examiner respectfully disagrees and refers to element 230, 250, 256 of DeLuca. The cushioning chambers protrude from this piece, and are retained on a housing by this piece. Absent a housing, the cushioning chambers would collapse within the gripping portion when pressure is applied. At one end of the gripping portion, in figure 11, there is a radially inner housing. At the other end, it appears a portion of 252 extends radially within the gripping portion and chamber.

21. With respect to claim 13, examiner incorporates the above response from claim 12 here.

22. With respect to claim 15, examiner incorporates the above response from claim 6 here.

23. This Office Action is made non-final because of new claim objections that were not necessitated by applicant's amendments to the claims.

### ***Conclusion***



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24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Kyle whose telephone number is 571-272-7057. The examiner can normally be reached on Monday - Friday, 8:30 am - 5:00 pm.

25. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

26. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

mk

A handwritten signature in black ink, appearing to read "Michael J. Kyle", is located in the bottom right corner of the page.